

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company)	
)	00-0259
Petition for Expedited Approval of)	
Implementation of a Market-Based)	
Alternative Tariff, to become effective)	
on or before May, 2000, pursuant to)	
Article IX and Section 16-112 of the)	
Public Utilities Act)	(Cons.)
)	
Central Illinois Public Service Company)	
Union Electric Company)	
)	00-0395
Petition for Approval of Revisions to)	
Market Value Tariff, Rider MV)	
)	
Illinois Power Company)	
)	00-0461
Proposed New Rider MVI and)	
Revisions to Rider TC)	

**INITIAL BRIEF OF THE PEOPLE OF THE
STATE OF ILLINOIS
(REDACTED VERSION)**

November 3, 2000

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Revisions to Rider TC)	

NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, November 3, 2000, we have filed with the Chief Clerk of the Illinois Commerce Commission the enclosed Initial Brief Of The People Of The People Of The State Of Illinois via e-docket to the Chief Clerk of the Illinois Commission at 527 East Capitol Avenue, Springfield, Illinois 62794-9280.

Mark G. Kaminski
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Mark G. Kaminski, Assistant Attorney General, hereby certify that I served the above identified documents upon all active parties of record on the attached service list by United States Mail, first class postage prepaid on November 3, 2000, and by electronic mail to all active parties.

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Comes now the People of the State of Illinois, by James E. Ryan, Attorney General of Illinois (hereinafter “People” or “AG”), and, for their Initial Brief in the above captioned cause, file the following.

INTRODUCTION

Commonwealth Edison Company (hereafter “ComEd”), Central Illinois Public Service Company/Union Electric Company (hereafter “Ameren”) and Illinois Power Company (hereafter “IP”) each, in accordance with Section 16-112 of the Public Utilities Act, 220 ILCS 5/16-112, petitioned the Commission for a market index methodology alternative to the Neutral Fact Finder (hereafter “NFF”) process, for determining the market value of electric power and energy. The market value of electric power and energy is used to calculate the Power Purchase Option (hereafter “PPO”) price and Customer Transition Charge (hereafter “CTC”) fee.

On July 6, 2000, the Commission, on its on motion, consolidated the three dockets. On October 2, 2000, a hearing commenced. On October 5, 2000, the evidentiary record was concluded. On October 13, 2000, the record was marked Heard and Taken.

UTILITIES PROPOSALS

4. ComEd’s proposal

Essentially, ComEd would determine market value for peak hours by using a combination of monthly forward prices obtained by two reporting services, Altrade and Bloomberg Power Match (hereafter “Bloomberg”) from the Into-ComEd market by taking morning and afternoon screen prints for a twenty day period. Average monthly historical prices from Power Markets Week’s Daily Price Report would be used to determine market value for off-peak hours. Customers’ market value charges, and associated CTCs, would be calculated twice a year, in conjunction with the so-called Applicable Period A and Applicable Period B. Applicable Period A covers a twelve month period starting with the June billing month and ending with the following May billing month. Applicable

Period B covers a nine month period starting with the September billing month and ending with the following May billing month. Customers receiving delivery services starting in the billing months of May, June or July would be subject to Applicable Period A calculations, and would remain subject to Applicable Period A CTCs as long as they receive delivery services.

Customers receiving delivery services beginning in the billing months of August through April would be subject to Applicable Period B calculations. At the end of that period, that is, the following May billing month, Applicable Period B customers would be subject to Applicable Period A CTCs. Customers would continue being subject to Applicable Period A CTCs as long as they receive delivery services. A customer will only be subject to Applicable Period B charges for one cycle.

4. Ameren's proposal

Ameren's proposal is similar to ComEd's proposal in that it too utilizes Altrade and Bloomberg, including the twice daily activity observation for twenty days method to determine peak prices, and the Applicable Period A/Applicable Period B method to set CTCs. The difference is Ameren would use the Into-Cinergy market. Off-peak market values would be determined by using historical prices obtained from Power Markets Week's Daily Price Report.

4. IP's proposal

IP also proposes the use of Altrade and Bloomberg as data sources from the Into-Cinergy market for peak hours. However, IP would include the use of Power Market's Week's published survey for peak hours calculations. Off-peak market values would be determined from published historical prices.¹ The major difference is IP would calculate market values, and associated CTCs, on a monthly, that is, twelve times per year, basis. The data collection would occur during a ten-day, as opposed to a twenty-day, window. Each customer's charges would remain constant for a twelve-month period beginning with the billing cycle that commenced their delivery services.

ARGUMENT

¹ IP indicates that it would use the McGraw Hill DRI and Platt's daily published reports. IP Ex. 2.2, p. 7.

I. Overview of Applicable Statutory Provisions and Requirements

Section 16-112(a) of the Public Utilities Act (“the Act”) provides:
The market value to be used in the calculation of transition charges as defined in Section 16-102 shall be determined in accordance with either (i) a tariff that has been filed by the electric utility with the Commission *pursuant to Article IX* of this Act and that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy, or ...the neutral fact-finder process

220 ILCS 5/16-112(a) (emphasis added). To comply with Article IX, each utility’s proposed methodology for the determination of the market value of electric power and energy must be found, by the Commission, “to be just and reasonable.” 220 ILCS 5/9-201(c). The Customer Choice Act, 220 ILCS 5/16-101, requires the Commission to encourage statewide competition. Therefore, effects on competition should be a factor in any determination of justness and reasonableness.¹ Each utility bears the burden of proof to establish its respective methodology is just and reasonable. *Id.* The People maintain that the proposed methodologies must be modified, as discussed below, to be deemed just and reasonable.

This consolidated docket’s initial inquiry must be whether or not any of the proposed methodologies meet the threshold requirements of Section 16-112. When interpreting a statute, general analysis of statutory construction “... must always begin with the language of the statute, which is the surest and most reliable indicator of legislative intent.” *People v. Pullen*, 733 N.E.2d 1235, 2000 Ill. LEXIS 989 at 8 (2000). Section 16-112(a) requires the market value for electric power and energy to be determined as a “*function* of an exchange traded or other market traded index ... *applicable* to the market in which the utility sells, and the customers in its service area buy, electric power and energy....” 220 ILCS 16-112(a) (emphasis added).

Each utility proposes the use of the Altrade and Bloomberg reports of trades and bid/offers from either the Into-ComEd market or the Into-Cinergy market. This is clearly a “*function* of an exchange traded or other market traded index.” *Id.* (emphasis added). Additionally, the contracts being traded involve power and energy that will ultimately be used to meet load requirements in the utility’s service area, thereby being “*applicable* to the market in

¹ If the Commission does approve a market index alternative to the NFF, the potential difficulty in ordering and/or enforcing any future modifications, due to the provisions of Section 16-112(m), renders the Commission’s scrutiny of the justness and reasonableness of the instant proposals all the more critical.

which the utility sells, and the customers in its service area buy, electric power and energy....” *Id.* (emphasis added).

Therefore, the proposed market index methodologies would comply with the plain language of the statute.

II. Methodology for Determining Prices under Market Index Proposals.

IP and Ameren propose the use of the Into-Cinergy market, while ComEd advocates using the Into-ComEd market. The Commission’s decision to consolidate these dockets is a strong indication of its desire for uniformity. While Staff witness Zuraski has suggested that all three tariffs need not be completely identical (Staff Ex. 3.0, p. 15, line 301), he does concede: “... where changes to a utility’s proposal are highly advisable, I generally strive for a uniform approach.” *Id.* at 16, line 319. The People believe that in this post Customer Choice Act¹ environment, competition, and the benefits associated therewith, will more likely thrive if market values for electric power and energy are derived from a single market. This approach would take one good component of the NFF process (a single source determining market values for all Illinois electric suppliers) and apply it to the market index methodology process. Confidence in the ability of RES/ARES to operate/compete equally in Illinois² could only be enhanced. For this reason, and the reasons discussed below, the People urge the Commission to issue an order that all utilities use the Into-Cinergy market for data collection to determine the market value of electric power and energy.³

1. The Into-ComEd market’s smaller size allows a single large party to indirectly manipulate

¹ 220 ILCS 5/16-101.

² This is not to say that a market index methodology would result in equal electric prices throughout the state. The ultimate charge to an end-user will be dependant upon each utilities delivery services tariff.

³ ComEd witness Huntowski thinks the use of the Into-Cinergy market is reasonable. Huntowski testified “... I believe the use of an Into Cinergy price would still be reasonable.” ComEd Ex. 4, p. 4, line 21. Additionally, ComEd witness Crumrine stated that if he had “... to choose the NFF or an appropriately designed forward-looking price from Cinergy ... I would choose Cinergy.” Tr. 1204, line 10.

that market

Staff witness Zuraski notes that “ComEd itself appears to dominate [the Into-ComEd] market.” Staff Ex.

3.0, p. 26, line 507. As such, ComEd’s buying and selling defines the Into-ComEd market. Indeed:

Staff has determined that there were a total of (NOTE: Proprietary information follows)

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XXXXXXXXXXXXXXXXXXXX (End proprietary information).

Id. at 26, line 510. This suggests, according to Staff witness Zuraski, “that ComEd can exert influence over its own market if the Into-ComEd data continue to be relied upon in the future.” *Id.* at 27, line 516. The People agree.

Although there is nothing to indicate that ComEd has acted, or would act, improperly, the possibility of market manipulation, whether intentional or not, does exist. *See*, Staff Ex. 3.0, p. 18, line 349, *et. seq.*; Tr. 190, line 19, *et. seq.* Logic would dictate that if this appearance of impropriety is removed, RES/ARES would have more confidence in their ability to profitably operate in Illinois, thereby enhancing the potential for competition that the Legislature clearly envisioned with the passage of the Customer Choice Act. The Into-ComEd market may, at some time, enjoy the diverse participation that would mitigate any market manipulation concerns. However, that time is not now.¹

The Into-Cinergy market has at least three Illinois utilities trading for power and energy, and therefore cannot be dominated in the same manner that ComEd dominates the Into-ComEd market. The Into-Cinergy market’s greater size, and, presumably greater trading diversity, creates a market that cannot be indirectly manipulated by any single, large participant. Therefore, the Into-Cinergy market is a better choice for accurate, reliable market value data.

2. The Into-Cinergy market is far more liquid than the Into-ComEd market

¹ The People do not advocate that the Into-ComEd market never be used to determine market values. The People would support some type of monitoring procedure to compare market values derived from data observed in the Into-ComEd market with those market values determined from data taken from the Into-Cinergy market. ComEd witness Huntowski agrees: “If the Commission is concerned about the robustness of the Into ComEd price at this time, I would recommend monitoring the difference between the Into ComEd and Into Cinergy forward prices listed on the electronic exchanges prior to deciding to disregard the ComEd prices.” ComEd Ex. 4, p.4, line 24. When the robustness, and as discussed below, the liquidity, of the Into-ComEd market results in a confidence level equivalent to that possessed by the Into-Cinergy market, the Commission could revisit the issue.

The simple truth is that the Into-Cinergy market is more heavily traded than the Into-ComEd market. *See generally*, Zuraski Direct, Staff Ex. 3.0, p. 25, line 480. All three utilities in this consolidated docket trade in the Into-Cinergy market. Indeed, Staff witness Zuraski states in his direct testimony: (NOTE: Proprietary information follows)

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XX.

(End proprietary information) *Id.* at 25, line 482. Regardless of whether or not the size/liquidity of a market is relevant in arriving at an accurate market value for electric power and energy, the confidence of current and potential electric suppliers in Illinois as a viable business arena can, again, only be enhanced by the use of the larger market. The People believe, and urge the Commission to keep in mind, that any Commission order that contains elements that foster competition without sacrificing the public's interest in the safety, reliability and affordability of electric power and energy, advances Legislative intent. *See*, 220 ILCS 5/16-101A(c). Therefore, data obtained from the Into-Cinergy market should be used by all utilities to determine the market value of electric power and energy in Illinois.

3. Irrespective of the concerns regarding transparency, use of the Into-Cinergy market is recommended

The availability of Altrade and Bloomberg data is problematic. Altrade and Bloomberg data is not publicly available.¹ In fact, that data information is only available to wholesale participants, that is, persons or entities that are authorized to trade on those exchanges. Tr. 232, line 3, Tr. 1176, line 8. To be privy to the Altrade and Bloomberg data, an authorized trader must pay an initial fee of \$75,000.00 and a monthly fee of \$5,250.00 for update service. Tr. 390, line 10. That is not an obstacle for large parties such as ComEd, IP or Ameren, but it certainly is for smaller business owners. This enormous cost effectively denies public access.² In spite of this

¹ While developing its market index methodology, ComEd witness Nichols stated that ComEd gave no consideration to whether end-use retail customers would have access to the input data used for market value determination . Tr. 1152, line 9.

² In its order in ICC Doc. No. 99-0171, the Commission denied ComEd's proposal for a market index methodology alternative to the NFF process. The data for determining on peak market values in that proceeding was derived from daily Cinergy futures which were publicly available on the New York Mercantile Exchange. The Commission did recognize the benefit of publicly available data. The Commission concluded: "[t]he key benefit to the alternative proposal is its transparency. The use of publicly available data provides visible and current price signals for all participants, promotes price stability and enables both customers and suppliers to forecast future market values." *Commonwealth Edison Company: Petition for approval of an alternative methodology for calculating market values*

transparency problem, Staff witness Zuraski states:

It would be preferable for the Staff to be able to more closely observe the Altrade and Bloomberg marketplaces, from time to time, in an attempt to detect activity that might be related to manipulation of the index or to determine if these marketplaces show signs of becoming as virtually extinct as the marketplace for Cinergy futures listed on NYMEX. However, I believe that the Commission's ongoing oversight over the market indexes can be adequately maintained with audits at each and every new computation of the index....

Staff Ex. 3.0, p. 30, line 586.

While the People agree with and would support Staff witness Zuraski's opinion, the People believe another solution exists. An independent third party could compile the data from the Altrade and Bloomberg exchanges, use that data to calculate the market value for electric power and energy and provide those values to the utilities. This independent third party would, in essence, be a Third Party Data Collector (hereafter "TPDC") who uses a market index methodology to determine market values instead of the current contract submission system.³ The Commission's ongoing oversight to which Staff witness Zuraski referred could be readily maintained. As with the current NFF, the utilities could fund the TPDC. All parties would have the same accessibility to the TPDC as they do with the current NFF. Greater accessibility is primarily intended to mitigate manipulation concerns. It is axiomatic that eliminating utilities from the market value data retrieval process removes the possibility of a utility manipulating the market data. Those parties with the financial wherewithal to gain access to the Altrade and Bloomberg exchanges would not be able to gain an advantage, whether real or perceived, over other parties. This would allow the use of a market index methodology for determining the market value of electric power and energy, while maintaining a level playing field for all participants.

4. The Into-Cinergy market data does not require a basis adjustment

IP and Ameren operate in the Southern Main market. Southern Main does not currently have a robust forwards market. Therefore, to determine accurate market values for electric power and energy, IP and Ameren propose using the Into-Cinergy market. These utilities maintain that the market values derived from the Into-

pursuant to Article IX and Section 16-112 of the Public Utilities Act, Order of August 24, 1999, 1999 Ill. PUC LEXIS 599, 38-39 (ICC Docket No. 99-0171).

³ In its Doc. No. 99-0171 order, the Commission expressed its concern regarding "... repeatedly trying to discern the various inputs to the NFF's conclusions..." *Supra.*, at 12. The People's proposed solution would eliminate that problem.

Cinergy market need to be adjusted. This so-called basis adjustment is intended to account for the geographical location difference between Southern Main and Into-Cinergy.

Staff witness Christ evaluated the suggested basis adjustments, and concluded, [t]he results [of my evaluations] do not support a recommendation to estimate forward on-peak prices using any of the different basis adjustments I examined.

Staff Ex. 4.0, p. 29. The utilities failed to offer any persuasive evidence to the contrary. Consequently, the People support Staff witness Christ's evaluation and recommendation that no basis adjustment is necessary.

Without the need for a basis adjustment, ComEd witness Huntowski's claim that "[t]he advantage of utilizing the Into-ComEd [instead of the Into-Cinergy] price is that a basis differential does not have to be estimated." ComEd Ex. 4, p. 4, line 19, is rendered moot. Staff witness Christ's basis adjustment evaluation eliminates this "advantage" for using the Into-ComEd market.

5. ComEd's revised data hierarchy should be adopted for all utilities

The People believe the market value data collection hierarchy approved by the Commission should provide for the collection of the maximum amount of market data. As discussed above, there is a legitimate concern regarding the thinness of both the Into-Cinergy and Into-ComEd markets. Because of that thinness, the number of actual trades may not supply sufficient data to accurately determine the market value of electric power and energy. Prudence dictates the use of bid/offer midpoints where needed to supplement actual trades.

Notwithstanding the potential usefulness of bid/offer midpoints, the People believe that actual trades are a better representation of the market value of electric power and energy than are bid/offer midpoints. Therefore, a market value data collection hierarchy that gives preference to actual transactions over bid/offer midpoints should be adopted by the Commission.

_____ ComEd joint witnesses Crumrine and Nichols proposed a revision to ComEd's data collection hierarchy that gives preference "... first to weighted trades, then to last trades, and finally to bid/offer midpoints." ComEd Ex. 10, p. 16, line 21. This revised hierarchy gives the proper preference to collected data.

The People believe the Commission should adopt ComEd's revised hierarchy as the standard for all utilities in selecting data for use in determining the market value of electric power and energy in Illinois. In the alternative, the People maintain that any data collection hierarchy adopted by the Commission should adhere to the standards set

forth above.

III. Pricing and Market Definition Related Issues

The People believe Staff witness Zuraski's opinions regarding adjustments for uncertain loads is reasonable and supportable.

IV. Time Period and Notice Related Issues

ComEd and Ameren propose calculating market values of electric power and energy, and the associated CTCs, twice a year, the so-called Applicable Period A and Applicable Period B method. IP calculations would take place twelve times a year, that is, monthly. For the reasons set forth below, the People believe the Applicable Period A and Applicable Period B method is superior.

IV The Applicable Period A and Applicable Period B method is less confusing than the twelve month method

Generally speaking, the less complicated methodology will be less confusing. Clearly, choosing whether or not to take delivery services based upon two sets of electric power and energy charges, and the associated two CTC charges, is less complicated, and, therefore, much easier, than having to take into account twelve such numbers.

A given year has two distinct electric power and energy usage periods: the volatile summer months and the rest of the year. As long as a retail customer has sufficient information to decide when, or if, he/she should take delivery services, a reasonable choice can be made. Any more information than is necessary needlessly complicates the decision process. The most appropriate goal is having an accurate representation of the cost of electric power and energy. Separating the volatile summer months from the rest of the year accomplishes this. IP's twelve sets of calculations needlessly complicates the decision process. The possibility of confusion is increased. The Applicable Period A and Applicable Period B method separates the volatile summer months and the rest of the year, allowing for an accurate representation of the cost of electric power and energy. IP's twelve month method is needlessly complex, and should be replaced with the simpler, less confusing, Applicable Period A and Applicable Period B method.

2. IP's twelve month method inherently offers less data with which to calculate a market value

Because IP calculates a new market value every month, it only takes data from the Into-Cinergy market during a ten day window. The Applicable Period A and Applicable Period B method collects data during a twenty

day window. Clearly, the Applicable Period A and Applicable Period B method has the potential for more data to be used in arriving at a more accurate representation of market value. The Commission should definitely opt for the method that potentially offers a broader data base for calculating the market value of electric power and energy.

That method is the Applicable Period A and Applicable Period B method.

3. IP's twelve month method provides precious little time to make an important decision

Deciding whether or not to take delivery services is an important decision. Because IP recalculates market values every month, the time frame in which to make that important decision is reduced to two weeks or less. This is an unnecessary reduction of the time that customers have to evaluate their options. That is simply unfair. While a large, sophisticated customer might not be affected by this short time frame, a small, less sophisticated customer very easily could, and likely would, be adversely prejudiced by it. This potential adverse prejudice is unwarranted. Regardless of whether this adverse prejudice is real or imaginary, its potential may be enough to keep the small, less sophisticated customer from attempting to take advantage of the Legislature's perceived benefits of the Customer Choice Act. That, in and of itself, is sufficient reason for the Commission to adopt the Applicable Period A and Applicable Period B method.

4. IP's twelve month method is anti-competitive

Competition, and the benefits associated therewith, has a better chance of succeeding statewide if all Illinois customers have the same, or very similar, opportunities. Under IP's twelve month method, an alternative electric supplier may have to formulate a completely different business strategy just to operate in IP's service area. This could easily reduce the number of electric suppliers willing to enter IP's service area. Establishing a competitive environment is difficult enough without adding this potential barrier. By requiring IP to use the Applicable Period A and Applicable Period B method, the Commission can avoid this possible hindrance to competition.

WHEREFORE, for the reasons set forth above, the People of the State of Illinois, respectfully request the Commission enter an order with the following relief.

1. All utilities will use the Into-Cinergy market to obtain data for determining the market value of electric power and energy;
2. All utilities will use the Applicable Period A and Applicable Period B method for

calculating market value charges, and the associated CTCs.

Respectfully submitted,
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